



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

**[EPA-HQ-SFUND-2014-0620; FRL-9914-86-OSWER]**

**RIN 2050-AG76**

**National Oil and Hazardous Substances Pollution Contingency Plan (NCP);**

**Amending the NCP for Public Notices for Specific Superfund Activities**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to amend the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to add language to broaden the methods by which the EPA can notify the public about certain Superfund activities. Currently, the NCP requires that the public be notified of certain Superfund activities by publishing a notice in a major local newspaper of general circulation. By broadening the notification methods, the lead agency will be able to adopt a notification approach that is most effective at informing a community. The lead agency should assess the ways a community receives information and consider the notification approach which best suits a specific site and community.

**DATES:** Written comments must be received by **[Insert date 30 days from date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. **EPA-HQ-SFUND-2014-0620**, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.

- Email: [superfund.docket@epa.gov](mailto:superfund.docket@epa.gov).
- Mail: Send two copies of your comments to: U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Superfund Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW, Washington, DC 20460-0002.
- Hand Delivery: Deliver two copies of your comments to: EPA Docket Center (EPA/DC), WJC West Building, Room 3334, 1301 Constitution Ave., NW, Washington, DC. Attention Docket ID No. **EPA-HQ-SFUND-2014-0620**. Such deliveries are only accepted during the Docket's normal hours of operation from 8:30 a.m. – 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. **EPA-HQ-SFUND-2014-0620**.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in

the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at [www.epa.gov/dockets](http://www.epa.gov/dockets).

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index.

Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Superfund Docket (Docket ID No. **EPA-HQ-SFUND-2014-0620**). This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Superfund Docket is (202) 566-0276. The EPA Docket Center (EPA/DC) is located at WJC West Building, Room 3334, 1301 Constitution Ave., NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

General information: Superfund, TRI, EPCRA, RMP and Oil Information Center at (800) 424-9346 or TDD (800) 553-7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412-9810 or TDD (703) 412-3323.

Technical information: Jean Farrell at (703) 603-9055 ([farrell.jean@epa.gov](mailto:farrell.jean@epa.gov)),  
Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC  
20460-0002, Mail Code 5204P.

## **SUPPLEMENTARY INFORMATION:**

### **I. Why Is EPA Issuing This Proposed Rule?**

This document proposes to amend the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to expand the methods by which the EPA can notify the public about certain Superfund activities. The NCP requires the lead Agency to publish a notice “in a major local newspaper of general circulation” when certain Superfund site-related activities occur. Many of these requirements were established in 1990 or earlier versions of the NCP, when it was common practice for government agencies to publish notices of planned actions in newspapers. Today, multiple ways are used to notify the public about Superfund site-related activities that may be as or more effective than publishing notices in newspapers. For example, the public may be notified of certain actions the lead agency takes by distributing flyers door-to-door, mailing notices to homes, sending e-mail notifications, making telephone calls or posting on websites. In certain cases, publishing a notice in a major newspaper of general circulation may not be the most effective way of notifying a community about a specific Superfund action, and may be less cost effective than other notification methods.

EPA is proposing to change the public notice language in the NCP. Instead of giving adequate notice to a community via a major local newspaper of general circulation, EPA is proposing that such notice be given via a major local newspaper of general circulation or by using one or more other mechanisms. As the Superfund

community involvement program has gained experience working with communities around Superfund sites, EPA often has used additional communication approaches beyond publishing notices in major local newspapers of general circulation to ensure communities have an opportunity to be fully informed and involved in the Superfund process. Making this modification to the NCP will allow the lead agency to select an effective way or ways to inform the public.

One way the lead agency may learn about community preferences on communications approaches is when conducting community interviews as part of the development of the Community Involvement Plan (CIP) (also known as a Community Relations Plan) at a site. A CIP is a site-specific strategy to enable meaningful community involvement throughout the Superfund cleanup process. Consistent with the NCP [300.415(n)(3)(i); 300.415(n)(4)(i); and 300.430(c)(2)(i)], the lead agency conducts in those instances interviews with local officials, community residents, public interest groups, or other interested or affected parties, as appropriate, to solicit their concerns and information needs, and to learn how and when citizens would like to be involved in the Superfund process.

Conducting community interviews is a particularly effective way to gather information about how a community receives information. The information and insights gained from community interviews will help the lead agency make a decision on which notification approach suits a specific site and best encourages the community's participation. When community interviews are not conducted, the lead agency can determine community preferences on communication approaches by conducting activities

such as consulting local leaders or media outlets to learn how a community typically receives information.

In addition to the above, Superfund has a long history of providing meaningful community involvement opportunities at critical junctures in the cleanup process, such as selection of remedial actions, five-year reviews of sites where waste is left in place, and deletions of sites from the National Priorities List (NPL). In addition to ensuring the basic requirements for community involvement are met, the lead agency may enlist additional community notification processes over and above the basic requirements to enhance the community's involvement, and tailor the communication approaches to meet the needs of the community.

## **II. What Does This Amendment Do?**

This document proposes to revise the NCP to expand the methods by which the EPA can notify the public about certain Superfund activities. This rule will revise six sections of the NCP to change the public notice language in the NCP to allow adequate notice to a community via a major local newspaper of general circulation or by using one or more other mechanisms. The intent of these sections is to ensure the lead agency informs the public of Superfund activities at defined stages within the Superfund process. Specifically, this amendment will add language to:

§ 300.415(n)(2)(i) that requires a notice of the availability of the administrative record file for CERCLA actions where, based on a site evaluation, the lead agency determines that a removal is appropriate, and that less than six months exists before on-site removal action must begin.

§ 300.415(n)(4)(ii) that requires notification of the engineering evaluation/cost analysis (EE/CA) where the lead agency determines that a CERCLA removal action is appropriate and that a planning period of at least six months exists prior to initiation of the on-site removal activities.

§ 300.425(e)(4)(ii) that requires notification of releases that may be deleted from the National Priorities List (NPL).

§ 300.815(a) that requires notification of the availability of the administrative record file for the selection of a remedial action at the commencement of the remedial investigation.

§ 300.820(a)(1) that requires notification of the availability of the administrative record file when an EE/CA is made available for public comment, if the lead agency determines that a removal action is appropriate and that a planning period of at least six months exists before on-site removal activities must be initiated.

§ 300.820(b)(1) that requires notification of the availability of the administrative record file for all other removal actions not included in § 300.820(a).

This document does not propose changes to the publication requirements of § 117 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Section 117(d) of CERCLA states “[f]or the purposes of this section, publication shall include, at a minimum, publication in a major local newspaper of

general circulation.” Activities included under section 117 of CERCLA include section 117(a) notification of the proposed plan, section 117(b) notification of the final remedial action plan adopted, and section 117(c) notification of an explanation of differences after adoption of a final remedial action plan. Publication in a major local newspaper of general circulation will continue to be required for 1) notice of availability of the proposed plan (40 CFR 300.430(f)(3)(i)(A)), 2) notice of availability of the Record of Decision (40 CFR 300.430(f)(6)(i)), 3) notice that briefly summarizes the explanation of significant differences (40 CFR 300.435(c)(2)(i)(B)), 4) notice of availability and a brief description of the proposed amendment to the Record of Decision (40 CFR 300.435(c)(2)(ii)(A)), and 5) notice of availability of the amended Record of Decision (40 CFR 300.435(c)(2)(ii)(G)). This document also does not propose changes to the publication requirements of 40 CFR 35.4110 that requires publication of a notice in a local newspaper after EPA receives a letter of intent to apply for a Technical Assistance Grant.

### **III. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this proposed action is not a “significant regulatory action” and is therefore not subject to OMB review. This action merely adds language to 40 CFR 300.415(n)(2)(i), 300.415(n)(4)(ii), 300.425(e)(4)(ii), 300.815(a), 300.820(a)(1), and 300.820(b)(1) to expand the methods by which the lead agency can notify the public about certain Superfund activities. This action will enable the lead agency to identify effective methods to notify the public. This action does not impose any requirements on any entity, including small entities. Therefore, pursuant to the



Regulatory Flexibility Act (5 U.S.C. 601 et seq.), after considering the economic impacts of this action on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. This action does not contain any unfunded mandates or significantly or uniquely affect small governments as described in Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub.L. 104-4). This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this action has been exempted from review under Executive Order 12866, this proposed rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 19, 2014.

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Mathy Stanislaus,  
Assistant Administrator,  
Office of Solid Waste and Emergency Response.

For the reasons set forth in this preamble, Title 40, chapter 1, of the Code of Federal Regulations is proposed to be amended as follows:

**PART 300-NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION  
CONTINGENCY PLAN**

1. The authority citation for part 300 is revised to read as follows:

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601-9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

2. Section 300.415 is amended by revising paragraphs (n)(2)(i) and (n)(4)(ii) to read as follows:

**§ 300.415 Removal action.**

\* \* \* \* \*

(n) \* \* \*

(2) \* \* \*

(i) Publish a notice of availability of the administrative record file established pursuant to § 300.820 in a major local newspaper of general circulation or use one or more other mechanisms to give adequate notice to a community within 60 days of initiation of on-site removal activity;

\* \* \* \* \*

(4) \* \* \*

(ii) Publish a notice of availability and brief description of the EE/CA in a major

local newspaper of general circulation or use one or more other mechanisms to give adequate notice to a community pursuant to § 300.820;

\* \* \* \* \*

3. Section 300.425 is amended by revising paragraph (e)(4)(ii) to read as follows:

**§ 300.425 Establishing remedial priorities.**

\* \* \* \* \*

(e) \* \* \*

(4) \* \* \*

(ii) In a major local newspaper of general circulation at or near the release that is proposed for deletion, publish a notice of availability or use one or more other mechanisms to give adequate notice to a community of the intent to delete;

\* \* \* \* \*

4. Section 300.815 is amended by revising paragraph (a) to read as follows:

**§ 300.815 Administrative record file for a remedial action.**

(a) The administrative record file for the selection of a remedial action shall be made available for public inspection at the commencement of the remedial investigation phase. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice or use one or more other mechanisms to give adequate notice to a community of the availability of the administrative record file.

\* \* \* \* \*

5. Section 300.820 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

**§ 300.820 Administrative record file for a removal action.**

(a) \* \* \*

(1) The administrative record file shall be made available for public inspection when the engineering evaluation/cost analysis (EE/CA) is made available for public comment. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice or use one or more other mechanisms to give adequate notice to a community of the availability of the administrative record file.

\* \* \* \* \*

(b) \* \* \*

(1) Documents included in the administrative record file shall be made available for public inspection no later than 60 days after initiation of on-site removal activity. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice or use one or more other mechanisms to give adequate notice to a community of the availability of the administrative record file.

\* \* \* \* \*

[FR Doc. 2014-23371 Filed 09/30/2014 at 8:45 am; Publication Date: 10/01/2014]